

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10958 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DISTRICT CENTRAL CO-OPERATIVE BANK LTD

Versus

DEPUTY SECRETARY (APPEALS)

Appearance:

MR TUSHAR MEHTA for Petitioner

VM PANCHOLI, AGP, for Respondent No. 1 & 2

RULE SERVED BY DS for Respondent No. 3

MR KALPESH N SHASTRI for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/07/1999

ORAL JUDGEMENT

In this petition under Articles 226 & 227 of the Constitution the petitioner - Mehsana District Central Coop. Bank has challenged the judgement and order dated 29.12.1993 passed by the State Government dismissing the revision application of the peittioner and confirming the

order dated 6.4.1992 passed by the Collector, Mehsana, in respect of land admeasuring 56 acres and 32 gunthas bearing survey no.540 paik of village Brahmanwadi of Sidhpur Taluka, Mehsana District.

2 The aforesaid land was earlier granted by the Collector, with the permission of the State Government to respondent no.3 - Saraswati Dudh Utpadak Sahkari Sangh Limited, a cooperative society for the purpose of growing grass for cattle grazing as per the order dated 21.7.1967 (Annexure-B to the petition). The said order mentioned that the grant was subject to the terms and conditions contained in Government Resolution dated 17.10.1947 and that the land was granted on a new and impartible tenure. The order further mentioned that the land could be used only for the purpose for which it was granted and that on breach of any of the terms and conditions the grant was liable to be cancelled and the contruction put up on the land would vest with the Government without any payment of compensation. Since the land was not being used for the purpose for which it was granted by the order dated 21.7.1967 the State Government cancelled the grant and the Collector passed consequential order dated 7.11.1968.

The land was regranted to respondent no.3 by order dated 9-7-1969 on the same terms and conditiions subject to which original grant was made in the year 1961. Another order was passed on 12.2.1970 for cancelling the previous orders and imposing the penalty at 5 times the assessment of the land.

Ultimately, the Collector passed the order dated 29-4-1982 cancelling the grant on account of the breach of the terms and conditions of the order of regrant. The revision application filed by respondent no.3 was partly allowed by the State Government and the matter was remanded to the Collector. The Collector again passed the order dated 6.4.1992 cancelling the grant and vesting the land in the State Government. The possession of the land was accordingly handed over by respondent no.3 to the State Government on 24.4.1992.

3 Aggrieved by the above orders, the petitioner-bank filed revision application before the State Government on 22.5.1992 contending that the land in question was mortgaged by respondent no.3-society with the petitioner-bank and that the impugned order of the Collector would put the petitioner-bank's security in jeopardy and hence the Collector's order was required to be cancelled. The State Government dismissed the revision application. Aggrieved by the said order the

petitioner-bank has filed this petition.

4 There is no dispute about the fact that the land in question was originally granted to respondent no.3 as a new and impartible tenure land and in the order of regrant also it was provided that the same terms and conditions would apply. Since the land was a new and impartible tenure land, respondent no.3 could not have mortgaged the land in question with the petitioner-bank without the prior permission of the Collector. It is not the case of the petitioner-bank that such a permission was obtained. The petitioner-bank cannot, therefore, come forward with the plea of injured innocence.

5 The ground urged by the petitioner-bank is that the petitioner-bank would not be able to recover its dues from respondent no.3 - sangh if the land in question is taken away from the respondent no.3.

Respondent no.4 North Gujarat Industries Co-op. Society filed application for being joined as a party-respondent. That application was granted in January 1997 and in the affidavit-in-reply dated 22.8.1997 filed on behalf of said respondent no.4 it is pointed out that the petitioner-bank has suppressed the fact that the petitioner-bank has already recovered Rs.2,40,000 by putting another land of respondent no.3 to sale being land bearing Survey No.573 which is in close proximity to the land in question being Survey No.540 paiki.

6 From the aforesaid discussion it is clear that in the first place the petitioner-bank had not obtained any permission of the Collector before respondent no.3 mortgaged the land in favour of the petitioner-bank and the plea that the petitioner-bank would be unable to recover its dues from respondent no.3 has also been belied by the fact of auction of another land of respondent no.3 as per order dated 5.7.1993 for a sum of Rs.2,40,000.

7 For the reasons aforesaid, there is no substance in the petition. The petition deserves to be dismissed. The petition is accordingly dismissed.

Rule is discharged with costs quantified at Rs.5,000 to be paid by the petitioner to respondents nos.1 and 2 within one month from today.

(mohd)